UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM ESCALERA, :
: PRO SE
: Petitioner, : 06 Civ. 13635 (LTS) (THK)
: -against- : ORDER
: :
SUPERINTENDENT A. TAYLOR, :
: :
: Respondent. :
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THEODORE H. KATZ, United States Magistrate Judge.

In an Order dated September 10, 2009, the District Court (Hon. Laura Taylor Swain, U.S.D.J.) adopted this Court's Report and Recommendation that the Petition be dismissed as moot because the relief Petitioner sought – declaring invalid the imposition, by the Department of Correctional Services ("DOCS"), of a sentence including post-release supervision – had been achieved in the New York state courts. In its Order, however, the District Court requested that this Court address the question of whether the claims identified in the Supplement to Petitioner's Second Amended Petition ("the Supplement") are timely and can properly be asserted in the context of this habeas corpus proceeding.

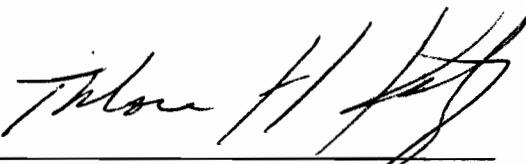
As the Court reads the Supplement, Petitioner claims that after he succeeded in having the DOCS sentence of post-release supervision vacated, the case was remanded to the trial court, which itself added a five-year period of post-release supervision to Petitioner's sentence, nunc pro tunc to March 3, 2004, the date

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on which the original sentence was imposed. (See Supplement, Ground One and attachment.) Petitioner appears to contend that his resentencing violates the Ex Post Facto Clause, subjects him to double jeopardy, and is a violation of his due process rights.

By October 5, 2009, Respondent shall file and serve a submission addressing the issues of whether the claims set forth in the Supplement are timely and can properly be asserted in this action. This submission should also address the issue of exhaustion. Any reply by Petitioner shall be filed by October 20, 2009.

So Ordered.



THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE

Dated: September 18, 2009
New York, New York